

86. Crouch always intended for NMTV to claim minority preferences. Tr. 2304-05; 2613. Crouch selected NMTV's initial directors specifically to obtain minority preferences. Tr. 2481-82.^{9/} Yet the presence of minorities was not a factor in selecting cities for translators. Tr. 1597-99; TBF Ex. 101 ¶34. Nor, as noted above, were minorities sought out for the most important management positions at NMTV's stations.

87. Indeed, NMTV was in no respect a training ground for minorities. Certainly Espinoza and Aguilar received no such training. And after 14 years of "training," Duff still knows so little of broadcasting that she thinks she has to be told by the Commission what rules to obey before she obeys them. TBF Ex. 101, pp. 61-70.

88. May told Crouch that NMTV could claim a minority preference because two of NMTV's three directors were minorities. Tr. 3106. May admitted that such a preference claim would be inappropriate if a director was not attending meetings, participating in discussion and voting, and generally directing the affairs and policies of NMTV. Tr. 3111, 3121-22.

89. Given the facts shown above, it is inconceivable that Gammon, May, Dunne, Juggert, or all of them did not realize that NMTV was not entitled to claim a minority preference. If even one of them realized this, he was ethically obligated to so inform

^{9/} NMTV claimed minority preferences for the applications it filed before April or May, 1993. Thereafter, no minority preferences were claimed, on advice of counsel. TBF Ex. 105 ¶19; MMB Ex. 149, p. 7; MMB Ex. 201, p. 7; MMB Ex. 247, p. 4; MMB Ex. 285, p. 4. However, there is no evidence that counsel ever advised NMTV to turn in licenses it had acquired with the aid of minority preferences improperly claimed. And of course no such licenses have been turned in.

Crouch, and it must therefore be assumed that he did so. Moreover, it is virtually inconceivable that Crouch himself, as an experienced broadcaster, did not realize that NMTV was not entitled to any minority preferences. It is not surprising that he did not admit it. Such an admission would have cost TBN its licenses.

90. Since we lack such an admission, TBN's and Crouch's good faith can best be ascertained by what they did in the Wilmington litigation, the Commission investigation, and the early pleadings in the Miami litigation. The story a wrongdoer tells when caught doing wrong often reveals his motives better than any other evidence.^{10/}

91. And what a tale TBN and Crouch did tell when they got caught. In opposing the Wilmington Petition, NMTV asserted that it had "acquired, constructed, and operated two full power television stations since early 1987." MMB Ex. 353, pp. 4-5. NMTV did not reveal that this acquisition, construction and operation was performed with TBN's money and supervised by TBN employees. NMTV, with no employees of its own at the time and no significant assets, had no capacity to independently acquire, construct or operate anything.

92. NMTV further described itself as a corporation "with a history of over ten (10) years duration. Id., p. 10. NMTV did not disclose that it had had no bank accounts or employees until 1987. NMTV maintained that it received its own revenues and contributions, but did not disclose that these were not earmarked for NMTV by

^{10/} This is especially true where a wrongdoer has once before barely escaped legal accountability for similar misconduct. TBN sure did. See International Panorama (I.D.), FCC 83D-4 (released January 25, 1993) (SALAD Ex. 35, p. 3).

contributors but were instead arbitrarily derived from a formula imposed by TBN. Joint Ex. 1, pp. 21-23. NMTV claimed that it had its own employee policies and insurance without disclosing that these were identically identical to those of TBN. Id. at 11. NMTV asserted that it had regular board meetings and conducted its business there normally, but did not disclose that Aguilar and Espinoza did not participate materially in NMTV and knew little of NMTV's affairs. Id. at 11, 17, 22. NMTV claimed that it hires and fires its own employees, files its own tax returns and pays its own bills. Id. at 17. However, NMTV did not disclose that TBN Chief Engineer Ben Miller played a key role in hiring the senior NMTV employees, that TBN employees were necessary for NMTV's operations, and that TBN prepared NMTV's tax returns and paid its bills.

93. NMTV further claimed that its funding to acquire the Wilmington station was "its December 7, 1990 letter from the Bank of California" even though that letter was intended only to mask TBN's involvement and represented TBN's money. Id. at 26; Tr. 2119.

94. On September 13, 1991, the Commission staff wrote NMTV with its concerns about the Wilmington transaction. MMB Ex. 374. In its response to that letter, NMTV finally admitted, without explanation, that the money to buy Wilmington really was coming from TBN. TBF Ex. 121, p. 16. Even then, NMTV did not disclose that it was already heavily in debt to TBN, with loans which had never been documented.

95. The Commission's letter was concerned in large part with the genuineness of NMTV's directors. MMB Ex. 374, pp. 1-2. However, NMTV did not disclose that Aguilar had attended only two of five meetings, and had not cooperated with counsel in supplying the information needed to report his criminal conviction. Nor did NMTV

disclose May's letter to Crouch urging the appointment of another director in view of Aguilar's many inadequacies.

96. After the Wilmington deal fell apart, NMTV filed a Request for Declaratory Ruling on its eligibility for minority preferences. Glendale Ex. 216. That pleading stated that Aguilar "attends most board meetings...speaks with Mrs. Duff periodically about NMTV business...receives and reviews regular financial statements and audited financial statements when they are prepared." Id., p. 7. None of these statements was true.

97. The Request for Declaratory Ruling also stated that Hill "has no present or past connection with Trinity" other than "a few appearances on Trinity programs, and occasional assistance from Trinity in generating support for LA soup kitchens." Id., p. 6. Actually, Hill was a regular TBN Programmer with a written contract and had received honoraria as a TBN speaker of nearly \$20,000. TBF Ex. 102, p. 11; Glendale Ex. 188.

98. The Request for Declaratory Ruling further maintained that Crouch was not involved in the day to day operations of the Portland station unless requested by Duff. Glendale Ex. 216, p. 7. NMTV did not report that Duff deferred to Crouch on engineering and budget matters.

99. The Request for Declaratory Ruling claimed that NMTV prepared and filed its own tax returns and hired its own employees. Id., p. 29. It did not disclose that TBN actually prepared and filed NMTV's tax returns, or that Miller was involved in NMTV's key hiring decisions.

100. Faced with two petitions to deny in this proceeding, NMTV claimed that it initially relied on the Bank of California for

financing of the Wilmington purchase but later changed its reliance to a "more favorable source" (TBN). TBF Ex. 120, p. 23. As noted above, however, the bank loan was a cover for TBN's involvement; NMTV, being nearly without net assets, could never had secured a loan independently. Tr. 2118-19.

101. The Miami petitioners to deny each sought a reporting issue on Aguilar's criminal conviction. In its opposition, TBF did not disclose Aguilar's noncooperation in providing information concerning the matter. TBF Ex. 120, pp. 20-22 and referenced Exhibits 4 and 5 thereto.

102. The Bureau wrote a letter to NMTV on March 30, 1992 posing 15 questions concerning NMTV's relationship to TBN. Glendale Ex. 219. Finally, in response to that letter, NMTV came clean on many of the essentials of its relationship to TBN. Duff maintained that before that letter, NMTV had failed to "focus" on several areas, including the fact that TBN provided NMTV with technical, operational, site, and construction services, payroll, accounts payable, business services, an open line of credit, tax preparation, tax filing and legal services; that TBN purchased or donated NMTV's equipment and supplies; that NMTV had no bank account until 1987; that TBN and NMTV had similar insurance and benefit plans; and that no NMTV officer other than TBN employees had ever signed an NMTV check. Tr. 1545-48.

103. The misrepresentations and omissions in the earlier pleadings described above were similar to those in RKO General, Inc. v. FCC, 670 F.2d 215, 228-230 (D.C. Cir. 1981) ("RKO"), but far more extensive and troubling than those in RKO. It took four pleadings before TBN finally began to disclose the basic nature of its

relationship with NMTV. Compare Beaumont NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988) (three sets of conflicting pleadings). As the RKO court made clear, "the Commission is not expected to play procedural games with those who come before it in order to ascertain the truth[.]" RKO, 670 F.2d at 229.

104. The Court need not evaluate the materiality of these concealments in order to decide this case. The "fact of concealment" is of greater import than the "facts concealed." FCC v. WOKO, 329 U.S. 223, 227 (1946); Pass Word, Inc., 76 FCC2d 465 (1980) (revocation may be based solely upon a pattern of deliberate misrepresentation); see also WMOZ, Inc., 36 FCC 202, 237-39 (1964).

105. Could this pattern of concealment have happened because of Crouch's lack of understanding of the Mickey Leland Rule? Hardly. The rule, 47 CFR §73.3555(d)(1), is a model of clarity. It prohibits ownership of more than twelve full power TV stations except where up to two additional stations are controlled by minorities. The Rule otherwise prohibits control "directly or indirectly, owning, operating or controlling, or having a cognizable interest[.]" Note 1 to the Rule requires that minorities exercise "actual working control in whatever manner exercised."

106. The Mickey Leland Rule has not been the subject of litigation because every communications lawyer understands what it means. Its clarity is underscored by the well known, closely related and well established real party in interest policy, whose test has been articulated as "whether [a] person has an ownership interest, or will be in a position to actually or potentially control the operation of the station." Arnold L. Chase, 61 RR2d 111, 135 (1986), citing KOWL, Inc., 49 FCC2d 962 (Rev. Bd. 1974); see also American International Development, 43 RR2d 411 (1978).

107. Crouch understood these rules and policies only too well. He testified that the Odessa application was intended as a means "to pass by the agency the possibility of being granted the exception to the rule of twelve." Tr. 2686. Crouch insisted that the Odessa application

put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission. If they pass on it and approve it, fine, our goal was to acquire as many stations and network affiliates as we possibly could.

Tr. 2674.^{11/}

108. Yet the Odessa application completely failed to apprise the Commission of the true nature of the TBN/NMTV relationship, apart from reporting that Crouch had an interest in TBN. The application did not even identify NMTV officers -- and TBN employees -- Phillip Crouch and Terence Hickey. MMB Ex. 129, p. 24.^{12/}

109. Crouch signed the Odessa application nonetheless. MMB Ex. 129. He was not sure why he signed it. Tr. 2699.

110. It must therefore be concluded that TBN and Crouch deliberately abused the Commission's processes in connection with the formation of NMTV, the operation of NMTV and facilities licensed to NMTV, and the minority and diversity preference claims of NMTV. Furthermore, TBN lacked candor in its defenses of these matters.

^{11/} The January 10, 1987 purchase agreement by which NMTV acquired the Odessa station also clearly recognized the importance of the Mickey Leland Rule to the Odessa transaction. It contained language stating that the agreement would be void if the FCC finds adversely on the 12 station claim based on its "interpretation and/or application thereof." MMB Ex. 122, Section 7(a).

^{12/} The application also erroneously reported that there had never been a change in the officers and directors of NMTV. MMB Ex. 129, p. 32.

This behavior is truly abhorrent. It disqualifies TBN and NMTV from holding any Commission authorizations.

C. There Are No Mitigating Factors

111. Two points must be made in anticipation of arguments likely to be made in mitigation.

112. First, reliance on counsel is not an excuse. Glendale's Findings observe that Colby May was not a very experienced attorney and did not do a thorough job investigating the law and advising his client. However, the law is clear that counsel's errors belong to the client. Carol Sue Bowman, 6 FCC Rcd 4723 (1991). The only exception arises when the lawyer's behavior is simply bizarre or criminal. See, eg., Georgia Public Telecommunications Commission, 7 FCC Rcd 2942, 2949 ¶36 (Rev. Bd. 1992) and Ponchartrain Broadcasting Co., Inc., 5 FCC Rcd 3991, 3993 ¶11 (Rev. Bd. 1990) (subsequent histories omitted). However, Colby May is neither a crook nor a fool. Furthermore, nothing prevented TBN or NMTV from obtaining a second opinion. Crouch was very experienced in FCC matters, having negotiated numerous deals to buy television stations. Inevitably, he must have encountered communications lawyers other than May. Indeed, after the January, 1989 Los Angeles Times' exposé (see n. 4 supra) it should have been clear to any experienced broadcaster -- if he was acting in good faith -- that he must obtain a second opinion. Certainly such an opinion was required after the Wilmington Petition, which sought early renewals of all of TBN's licenses.

113. Second, TBN's religious nature does not immunize it from compliance with the civil laws. Those laws apply equally to all. See Faith Center, Inc., 82 FCC2d 1 (1980); PTL of Heritage Village Church and Missionary Fellowship, Inc., 71 FCC2d 324 (1979); King's

Garden, Inc., 38 FCC2d 339, 341 (1972), aff'd, 498 F.2d 51 (D.C. Cir. 1974); cf. Bob Jones University, 42 FCC2d 522 (1973).

D. Strong Policy Considerations Justify Denial Of The Renewal Application

114. An important issue of public policy underscores the need for strict enforcement of the Commission's rules in this case: the need to maintain the core credibility of the licensing process.

115. It is fundamental to the system of licensing that the Commission know who is in charge of the stations it licenses. See Lorain Journal Company v. FCC, 351 F.2d 824 (D.C. Cir. 1965), cert. denied sub nom WWIZ, Inc. v. FCC, 383 U.S. 967 (1966). The Commission quite rightly examines broadcasters who play fast and loose with the ownership rules, for those rules, almost alone after deregulation, determine whether the public obtains a diverse spectrum of broadcast content. Seraphim Corp. (KGMC-TV), 2 FCC Rcd 7177 (1987); Phoenix Broadcasting Co., 44 FCC2d 838, 839 (1973); George E. Cameron, Jr. Communications (KROO), 91 FCC2d 870, 887-93 (Rev. Bd. 1982), recon. denied, 93 FCC2d 789 (Rev. Bd. 1983); rev'd on other grounds, 56 RR2d 825 (1984).

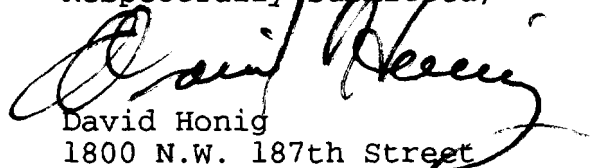
116. Thus, the Commission has not hesitated to take note of misconduct by application mills. See Abuses of the Commission's Processes, 3 FCC Rcd 4740 (1988) (designating investigation into applications promoted by Dr. Bernard Boozer) and the numerous issues designated in cases against Sonrise applicants.

117. This case provides a prime example of what the D.C. Circuit has characterized as "strange and unnatural" business arrangements. Bechtel v. FCC, 957 F.2d 873, 880 (D.C. Cir. 1992); see also Northampton Media Associates, 3 FCC Rcd 5164, 5170-71 (Rev. Bd. 1988), review denied, 4 FCC Rcd 5517 (1989) (subsequent history

connection with literally dozens of applications, the strongest possible sanctions are warranted. See BHA Enterprises, Inc., 31 RR2d 1373, 1404 (ALJ 1974) ("the continuing pattern of conduct of this licensee over the years which was violative of the Act and regulations and the cumulative nature of the violative acts of the licensee constitute a wanton disregard of the obligations owed by a licensee which calls for the imposition of the sanction of revocation of the licenses.")

123. WHEREFORE, it is respectfully submitted that the application for renewal of license of Trinity Broadcasting of Florida, Inc. should be denied.

Respectfully submitted,


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omitted) (criticizing nongenuine ownership structures designed merely to exploit the racial preference policies.) Tolerance for these structures undermine the minority ownership policies, for if anyone can arbitrarily establish a nongenuine structure and receive a minority preference, there is no incentive for anyone ever to do arms length business with a genuine minority. The rule being abused is one designed to place control of broadcast stations in the hands of legitimate minorities. Statement of Policy on Minority Ownership in Broadcasting, 68 FCC2d 979, 982 (1978). Using unreal "minority" entities bidding for full power stations and LPTV facilities is unfair competition.

118. Indeed, a holding that one can simply denominate uninvolved minorities, or minorities one controls, as "owners" will create a loophole in the minority ownership so large that it will swallow the underlying policy. Such a loophole would be contrary to Congress' intent in preventing the Commission from spending money to destroy its minority ownership policies. Pub. L. 103-121, 107 Stat. 1153 (October 27, 1993).

119. NMTV, which never invoked its minority status before the IRS or the public and never did anything of substance for minorities, will invariably argue that this proceeding is a high tech lynching, that punishing it will hurt minorities and somehow endanger the minority ownership policies. That is circular reasoning, for it assumes the conclusion that NMTV is a legitimate minority company. In fact, the Commission has not hesitated to punish even bonafide minorities who abuse these policies. See, eg., Silver Star Communications-Albany, Inc., 3 FCC Rcd 6342 (Rev. Bd. 1988) (subsequent history omitted) (minority owner put nonminority wrongdoer in charge of station purchased in distress sale). The

Commission must be evenhanded, dealing similar justice when nonminorities front off minorities to achieve unlawful ends at the public's expense.

120. Public confidence in the minority ownership policies is predicated on strict and voluntary compliance. That confidence is needed now more than ever, since minority bidding credits of considerable magnitude are the basis for the auction system for PCS and IDVS. Implementation of Section 309(j) of the Communications Act - Competitive Bidding (Second Report and Order), 9 FCC Rcd 2348, 2391-92, ¶¶241-44 (1994). These licenses will be delivered in auctions, without anything like the fact finding power available in a comparative hearing. Now more than ever, a clarion call for voluntary compliance must be heard loud and clear.

121. TBN and NMTV do not believe in voluntary compliance. Duff indulged the fiction that NMTV first needed to be apprised by the Commission as to what changes NMTV's rules and policies would require before she should be required to make these changes. TBF Ex. 101, pp. 61-70. But that's not the way we do things in the United States. Beneficiaries of federal privileges are not permitted to violate the rules until the government commands compliance. Our system of compliance relies on the voluntary efforts of all licensees, acting in good faith. It does not rely on the agency's power to issue a cease and desist order. If such an order has to issue whenever Jane Duff says she doesn't know what the law is, the Commission would do nothing else but micromanage NMTV.

ULTIMATE CONCLUSIONS OF LAW

122. TBF's abuses of process and lack of candor render TBF, TBN, and NMTV utterly unqualified to hold any broadcast authorizations of any kind. Because these abuses occurred in

CERTIFICATE OF SERVICE

I, David Honig, this 15th day of August, 1994, hereby certify that I have caused to be delivered by hand the foregoing "Findings of Fact and and Conclusions of Law" addressed to the following:

Hon. Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
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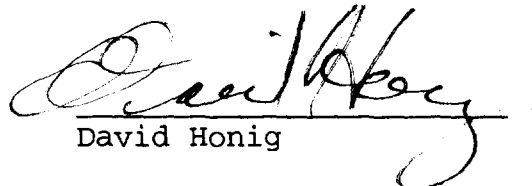
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